REMARKS

Claims 1-50 are pending in the present application. Claims 1, 4, 23, 33, 36, 37, 41, 44, and 45 have been amended to clarify previously presented limitations. No new matter was added. New Claim 51 has been added and is fully supported by page 6 of the specification.

Applicants thank the Patent Office for indicating Claims 5, 49 and 50 would be allowable and Claims 6-32 would be allowable if rewritten in independent form. The August 25, 2004 Office Action (page 8) stated "responsive to traffic data activity" could be broadly interpreted. Applicants have clarified "data traffic activity" and other terms in independent Claims 1, 36, 41, 44 and 45.

The Office Action rejected claims 36-40 under 35 U.S.C. §112. Claim 36 has been amended to clarify "overload condition" and "data traffic activity." Applicants respectfully submit that Claim 36 and its dependent Claims 37-40 comply with 35 U.S.C. §112.

The Office Action rejected Claims 1-4, 23, 33, 36, 37, 39 and 40-44 under 35 U.S.C. §102 in view of Zellner (6,069,882). Zellner states "the present invention assigns a priority to each remote user device." Col. 1, line 62 to col. 2, line 2. "If no idle channel is available, the mobile switch determines whether a remote use device with a lower priority than the requesting remote user device is using a channel. If a lower priority remote use is using a channel, its call is terminated and the channel is assigned to the requesting remote user device." Zellner Abstract.

Zellner does not disclose or teach "detecting a plurality of pre-existing open connections in an access network between the access terminal and the data network; selecting one of the pre-existing open connections based in part on data traffic activity of the pre-existing open connections, each pre-existing open connection being in one of a busy open state or an idle open state; releasing said selected pre-existing open connection; and allocating, to said access terminal, communication resources corresponding to said released, selected pre-existing open connection," as recited in amended Claim 1. Zellner distinguishes "user devices" by "priority." Zellner does not teach "selecting one of the pre-existing open connections based in part on data traffic activity of the pre-existing open connections," as recited in Claim 1.

Also, Zellner does not teach "busy open" or "idle open" connections, as recited in Claim 1. Pages 12-13 of Applicants' specification describe the difference between "open" versus "inactive" and the difference between "busy open" versus "idle open."

Additional limitations of the "pre-existing open connections" and "data traffic activity" of the open connections in Claim 1 are recited in dependent Claims 2-4, 6-35 and 51. Applicants respectfully submit that Claim 1 and its dependent Claims 2-4, 6-35 and 51 are allowable over Zellner.

Regarding Claim 36, Zellner does not disclose or teach "detecting an <u>overload condition</u>," "<u>selecting</u> a <u>pre-existing open connection</u> among a plurality of pre-existing open connections <u>based in part on data traffic activity of the open connections</u>, each pre-existing open connection being in one of a busy open state or an idle open state; and <u>releasing</u> said selected open connection <u>in response to said detected overload condition</u>," as recited in Claim 36. The Office Action cited col. 7, line 60 to col. 8, line 34 in rejecting Claims 33 and 36, but these lines relate to "priority" of "users." These lines in Zellner do not disclose "detecting an <u>overload condition</u>," "selecting a pre-existing open connection ... based ... on data traffic activity of the open connections" and "releasing said selected open connection <u>in response to said detected overload condition</u>," as recited in Claims 33 and 36. Applicants respectfully submit that Claims 33, 36 and dependent Claims 37-40 are allowable over Zellner.

Claim 41 should be allowable for the reasons stated above for Claim 1.

For Claim 44, Zellner does not disclose or teach "determining whether an open connection is in an <u>idle open</u> state in an access network between the access terminal and the data network; <u>selecting</u> said <u>idle open</u> state connection <u>based</u> in part <u>on data traffic activity of said idle open connection and other open connections</u>; <u>releasing</u> said selected <u>idle open</u> state connection; and allocating, to said access terminal, communication resources corresponding to said released, selected idle open connection," as recited in Claim 44.

The Office Action rejected Claims 34, 35, 38 and 45-48 under 35 U.S.C. 103(a) in view of Zellner.

For Claims 34, 35, 38 and 45, the Office Action (pp. 6-7) stated that Zellner does not disclose certain limitations in these Claims but these limitations would have been obvious to one of ordinary skill in the art. Applicants respectfully request the Patent Office to provide specific

published references that show these limitations and independent Claim 1 for Claims 34-35 and independent Claim 36 for Claim 38 would have been obvious for a prima facie 35 USC 103 rejection. Alternatively, Applicants respectfully request allowance of Claims 34, 35, 38 and 45.

For Claim 45, Zellner does not disclose or teach "selecting a pre-existing open connection in an access network between an access terminal and a data network based on a grade of service assigned to said pre-existing open connection and data traffic activity of the pre-existing open connection; releasing said selected open connection; and allocating, to said user, communication resources corresponding to said released, selected open connection," as recited in Claim 45. Applicants respectfully submit that Claims 45-50 should be allowable over Zellner.

Applicants respectfully submit that new Claim 51 should be allowable over Zellner for the reasons stated above for Claim 1.

REQUEST FOR ALLOWANCE

In view of the foregoing, Applicants submit that all pending claims in the application are patentable. Accordingly, reconsideration and allowance of this application are earnestly solicited. Should any issues remain unresolved, the Examiner is encouraged to telephone the undersigned at the number provided below.

Respectfully submitted,

Dated: December 20, 2004   By: _____ACC_____

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